

SESSION XII
PROCESSING THE ARRESTED SUSPECT
AND
PREPARATION FOR TRIAL

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PROCESSING THE ARRESTED SUSPECT AND PREPARATION FOR TRIAL

Upon successfully completing this session, the participant will be able to:

- o Discuss the importance of correct processing and report writing procedures in DWI arrests.
- o Discuss the correct sequence of DWI suspect processing procedures.
- o Discuss the essential elements of the DWI arrest report.
- o Discuss the importance of pre-trial conferences and presentation of evidence in the DWI trial.

CONTENT SEGMENTS

- A. The Processing Phase
- B. Preparing the DWI Arrest Report:
Documenting The Evidence
- C. Narrative DWI Arrest Report
- D. Case Preparation and Pre-trial
Conference
- E. Guidelines for Direct Testimony

LEARNING ACTIVITIES

- o Instructor-Led Presentations
- o Video Presentations
- o Interactive Discussion
- o Video Presentations
- o Video Presentations

PROCESSING THE ARRESTED SUSPECT AND PREPARATION FOR TRIAL

The successful prosecution of a DWI case is dependent upon the officer's ability to organize and present all relevant evidence of each element of the DWI violation. The officer must keep in mind that virtually all of this evidence must be compiled during the three phases of detection -- vehicle in motion, personal contact, and pre-arrest screening. The officer must be able to establish the level of impairment at the time that the violation occurred, therefore, observations are of critical importance. Subsequent evidence of impairment, such as the evidential chemical test result(s) and/or the evidence gathered during a drug evaluation, will be admissible only when a proper arrest has been made. The efforts expended in detecting, apprehending, investigating and testing/evaluating the DWI violator will be of little value if there is not sufficient evidence to prove every element of the violation.

Accordingly, if the evidence is not presented clearly and convincingly in court, the case may be lost, no matter how good that evidence may be. Therefore, it is essential that officers develop the ability to write a clear and concise report describing their observations and results of their investigation for presentation to the prosecutor.

What is evidence? Evidence is any means by which some alleged fact that has been submitted to investigation may either be established or disproved. Evidence of a DWI violation may be of various types:

- a. Physical (or real) evidence: something tangible, visible, audible (e.g. a blood sample or a partially empty can of beer).
- b. Well established facts (e.g. judicial notice of accuracy of the breath test device when proper procedures are followed).
- c. Demonstrative evidence: demonstrations performed in courtroom (e.g. field sobriety tests).
- d. Written matter of documentation (e.g. the citation, the alcohol influence report, the drug evaluation report, evidential chemical test results, etc.).
- e. Testimony (the officer's verbal description of what was seen, heard, smelled, etc.).

The prosecutor must be able to establish that the defendant was driving or operating a vehicle on a highway or within the state while under the influence of alcohol or drugs. The prosecutor also must establish that the following procedures were followed:

- a. That there were reasonable grounds for arrest.
 - 1. That the accused was the operator or in actual physical control of the vehicle.
 - 2. That there were grounds for stopping/contacting the accused.
 - 3. That there was probable cause to believe that the accused was impaired.
- b. That proper arrest procedures were followed.
- c. That proper regard was given to suspect's rights.
- d. That subsequent observation and interview of the suspect provided additional evidence relevant to the alleged offense.
- e. That there was a proper request for the suspect to submit to the chemical test.

The prosecutor's case will largely be based upon the officer's investigation, and in particular on the arrest report.

While it is true that many items which are critical to the prosecution are documented on special forms, the officer must keep in mind that the prosecutor may not have the time to search out relevant facts. The decision may be made to amend or reduce or even dismiss the case on the basis of the arrest report alone.

It is, therefore, essential that the report clearly and accurately describe the total sequence of events from the point the subject was first observed, through the arrest, the drug evaluation (if conducted), and subsequent release or incarceration.

Guidelines for Note Taking

One of the critical tasks in the DWI enforcement process is the recognition and retention of facts that establish probable cause to stop, investigate and subsequently arrest persons suspected of driving or operating a vehicle while impaired by alcohol and/or other drugs. The evidence gathered during the detection process must establish the elements of the violation, and must be documented to support successful prosecution of the violator. This evidence is largely sensory (see-smell-hear) in nature, and therefore is extremely short lived.

Police officers must be able to recognize and act on facts and circumstances with which they are confronted. But the officer must also be able to recall those observations, and describe them clearly and convincingly, to secure a conviction. The officer is inundated with evidence of DWI (sights, sounds, smells, etc.) recognizes it, and bases the decision to stop, investigate and arrest on their observations.

Since evidence of a DWI violation is short lived, police officers need a system and tools for recording field notes at scenes of DWI investigations. Technological advances have made it possible to use audio tape recorders and video tape recorders in the field and they provide an excellent means of documenting this short lived evidence. However, the vast majority of officers must rely on their own field notes.

One way of improving the effectiveness of field notes is to use a structured note taking guide. This type of form makes it very easy to record brief "notes" on each step of the detection process, and ensures that vital evidence is documented. The field notes provide the information necessary for completion of required DWI report forms and assist the officer in preparing a written account of the incident. The field notes will also be useful if the officer is required to provide oral testimony, since they can be used to refresh the officer's memory.

A model note taking guide has been developed for use in the basic course. DWI Detection and Standardized Field Sobriety Testing course (see attached copy).

Section I provides space to record basic information describing the suspect, the vehicle, the location, and the date and time the incident occurred.

Section II provides space to record brief descriptions of the vehicle in motion (Detection Phase One), including initial observation of the vehicle in operation, and observation of the stopping sequence.

Section III provides space to record brief descriptions of the personal contact with the suspect (Detection Phase Two), including observation of the driver, statements or responses made by the driver or passengers, the results of any pre-exit sobriety tests, observation of the driver exiting the vehicle, and any odors that may be present.

Section IV provides space to record the results of all field sobriety tests that were administered, and the results of the preliminary breath test (PBT) if it was given.

Section V provides space to record the officer's general observations, such as the suspect's manner of speech, attitude, clothing, etc. Any physical evidence collected should also be noted in this section.

The Processing Phase

The Processing Phase of a DWI Enforcement incident is the bridge between arrest and conviction of a DWI offender. Processing involves the assembly and organization of all of the evidence obtained during the detection phase, to ensure that the evidence will be available and admissible in court. Processing also involves obtaining additional evidence, such as a scientific chemical test or tests of the suspect's breath, blood, etc.

Typically, the processing phase may involve the following tasks:

- o Inform the offender that they are under arrest.
- o "Pat-down" or frisk the offender.
- o Handcuff the offender.
- o Secure the offender in the patrol vehicle.
- o Secure the offender's vehicle, passengers, property.
- o Transport the offender to an appropriate facility.
- o (If applicable) arrange for video taping.
- o Advise offender of rights and obligations under the Implied Consent Law.
- o Administer the evidential chemical test(s).
- o Advise offender of Constitutional Rights (Miranda Admonition).
- o Interview the offender.
- o Incarcerate or release the offender.
- o Complete the required reports.

Guidelines for Writing the Narrative Report

Report writing is an essential skill for a police officer. Good report writing becomes second nature with practice. While there is no one best way to write an arrest report, it is helpful to follow a simple format. Departmental policies and/or special instructions or requirements of the prosecutor provide some guidance.

Detection and arrest

During the detection phase of the DWI arrest process, the arresting officer must mentally note relevant facts to support the decision to arrest.

These facts are then recorded in the form of field notes and are used to refresh officer's memory when the formal arrest report is prepared.

The following block outline format identifies some of the essential ingredients in a DWI offense (arrest) report:

- o **Initial Observations** - Describe your first observations of the subject's actions. What drew your attention to the vehicle? Your first observations are important. Be sure to record the time and location of the first event.
- o **Vehicle Stop** - Record any unusual actions taken by the subject. How did the subject react to the emergency light and/or siren? Was it a normal stop? Be specific.
- o **Contact Driver** - Record your observations of the subject's personal appearance, condition of the eyes, speech, etc. Record the name and number of passengers in the vehicle and where they sat. Describe any unusual actions taken by the subject.
- o **Driving or Actual Physical Control** - In some cases, you may not use the subject's driving behavior as the basis for the contact. Your first contact could result from a crash investigation or a motorist assistance type of contact. **Your observations and documentation** must establish that the subject was driving or in actual physical control of the vehicle.
- o **Exit From Vehicle** - Record your observations of the subject's exit from the vehicle and include any unusual actions taken by the subject.
- o **Field Sobriety Tests** - Describe the subject's actions when you administered the field sobriety tests. Be specific.
- o **Arrest** - Document the arrest decision and ensure that all elements of the violation have been accurately described.
- o **Disposition/Location of Vehicle and Keys** - Indicate where the vehicle was secured or towed and the location of the keys. If the vehicle was released to another party or was driven by a backup officer, record that fact.
- o **Disposition of Passenger and/or Property** - Ensure that passengers and property are properly cared for.
- o **Transportation** - Describe where the subject was transported for evidential testing. Document time of departure and arrival. (This

information can be obtained from the radio log). Note any spontaneous comments made by the suspect.

- o Evidential Test - Document which test(s) were administered and by whom. Be sure to include the evidential test(s).
- o Implied Consent/Miranda Warning - Document that the admonishments were given at the appropriate point in the investigation.
- o Witness Statements - List all witnesses and attach copies of their statements.
- o Notification of Offender's Attorney or Other Party - Document the time and result of subject's telephone call to an attorney or other party.
- o Citation/Complaint - Document that the traffic citation/complaint was issued at the appropriate time if applicable.
- o Incarceration or Release - Document the time and place of incarceration or the name and address of the responsible party to whom the offender was released. Be sure to record the time.
- o Additional Chemical Test - If the subject is authorized to request additional chemical tests and does so, record the type of test, time administered, location, and party administering the test.

The foregoing list is not intended to be all inclusive. In many cases, several points will not be needed.

The narrative does not have to be lengthy, but it must be accurate. Remember, successful prosecution depends on your ability to describe the events you observed. Often a trial can be avoided (i.e., an offender may plead guilty) when you do a good job in preparing your arrest report.

A sample report providing an example of the block outline format is attached.

Case Preparation and Pre-trial Conference

Case preparation begins with your first observation and contact with the suspect. It is essential that all relevant facts and evidence are mentally noted and later documented in field notes or other official forms.

Guidelines for Case Preparation

- o Use field notes to document evidence.

- o Accurately note statements and other observations.
- o Review the case with other officers who witnessed the arrest or otherwise assisted you and write down relevant facts.
- o Collect and preserve all physical evidence.
- o Prepare all required documents and a narrative report.
- o Resume.

Remember, it is essential that all reports be consistent. If differences occur, be sure to adequately explain them. The defense will try to impeach your testimony by pointing out seemingly minor inconsistencies.

Preparation for Trial

Upon receipt of a subpoena or other notification of a trial date, review all records and reports to refresh your memory. If appropriate, revisit the scene of the arrest. Compare notes with assisting officers to ensure that all facts are clear.

During discovery, list all evidence and properly document it. Remember, evidence may be excluded if proper procedures are not followed.

Attention to detail is very important.

Pre-trial Conference

Successful prosecution is dependent upon the prosecutor's ability to present a clear and convincing case based on your testimony, physical evidence, and supporting evidence/testimony from other witnesses and experts.

If at all possible, arrange a pretrial conference with the prosecutor. Review with the prosecutor all evidence and all basis for your conclusions. If there are strong/weak points in your case, bring them to the prosecutor's attention. Ask the prosecutor to review the questions to be asked on the witness stand. Point out when you do not know the answer to a question. Ask the prosecutor to review questions and tactics the defense attorney may use. Make sure your resume is current. Review your credentials and qualifications with the prosecutor.

If you cannot have a pretrial conference, try to identify the main points about the case, and be sure to discuss these with the prosecutor during the few minutes you will have just before the trial.

Guidelines for Direct Testimony

Your basic task is to establish the facts of the case: that the suspect was driving or in actual physical control of a vehicle, on a highway or other specified location, within the court's jurisdiction, and was impaired by alcohol and/or other drugs. In other words, to present evidence to establish probable cause for the arrest and conclusive evidence that the violation in fact was committed.

Describe in a clear and convincing manner all relevant observations during the three detection phases and those subsequent to the arrest. Describe clearly how the suspect performed (e.g., "stepped off the line twice, raised the arms three times, etc."). By presenting your observations clearly and convincingly, you will allow the fact of the suspect's impairment to speak for itself.

Always keep in mind that juries typically focus on an officer's demeanor as much or more than on the content of the testimony. Strive to maintain your professionalism and impartiality. Be clear in your testimony; explain technical terms in layman's language; don't use jargon, abbreviations, acronyms, etc. Be polite and courteous. Do not become agitated in response to questions by the defense. Above all, if you don't know the answer to a question, say so. Don't guess at answers, or compromise your honesty in any way. Be professional and present evidence in a fair and impartial manner.

Typical Defense Tactics

In many cases, you will be the key witness for the prosecution. Therefore, the defense will try very hard to cast doubt on your testimony.

The defense may ask some questions to challenge your observations and interpretations. For example, you may be asked whether the signs, symptoms and behaviors you observed in the suspect couldn't have been caused by an injury or illness, or by something other than the alcohol/drugs you concluded were present. You may also be asked questions whose purpose is to make it appear as if you weren't really certain that you actually saw what you say you saw. Answer these questions honestly, but carefully. If your observations are not consistent with what an illness or injury would produce, explain why not. Make it clear that your conclusions about alcohol/drug impairment is based on interpretation of the observed facts.

The defense may also attempt to challenge your credentials by asking questions to cast doubt on the formal training you have had. There may also be an attempt to ask questions to "trip you up" on technical or scientific issues, and make it appear that you are less knowledgeable than you should be or claim to be. Stick to absolute honesty. Answer all questions about your training fully and accurately, but don't embellish. Don't try to make the training appear to have been more elaborate or extensive than it really was. Answer scientific or technical questions only if you know the answer. Otherwise, admit that you don't know. Don't try to fake or guess the answers.

And, the defense may ask questions to challenge your credibility. You may be asked several very similar questions, in the hope that your answers will be inconsistent. You may be asked questions whose purpose is to show that you had already formed your opinion well before the suspect completed the field sobriety tests. And, you may be asked questions that try to suggest that you eliminated portions of the tests or only gave incomplete or confusing instructions. Guard against these kinds of defense challenges by always performing complete, standardized field sobriety tests, exactly as you have been taught. Standardization will ensure both consistency and credibility.

DWI INCIDENT REPORT

Defendant: Eryn Greenfield
Age: 31
Date of Birth: 10/03/70
Date of Arrest: XX-XX-XX
Time of Arrest: 9:20 pm
CA - D.L. #: CA 1234567

First Observations:

On XX-XX-XX at approximately 9:00 p.m., I was patrolling westbound on Reed Avenue at the intersection with Interstate-80 (fully marked CHP patrol vehicle #904534). I was stopped at the intersection preparing to make a left turn onto eastbound I-80. I observed a yellow Volkswagen (S/V) traveling down the eastbound I-80 exit ramp approaching the intersection with Reed Avenue. I noticed the S/V traveling with no headlights. Furthermore, I noticed the right tires of the S/V travel over the solid white fog line on the exit ramp by approximately 2 feet. The S/V made a brief stop at the intersection, then made a right turn onto eastbound Reed Avenue. I made a U-turn and followed the S/V. The S/V then made a wide right turn from Reed Avenue onto southbound Riverpoint Drive. An enforcement stop was initiated at which point the S/V began to pull to the right. At the point the right front tire of the S/V rubbed up onto the raised concrete curb that paralleled the roadway.

Observations After The Stop:

I approached the S/V on the passenger side and made contact with the driver (convertible-top down). I immediately noticed that the driver had red and watery eyes. I advised her of the reason for the stop and asked if her vehicle had any mechanical problems. She stated, "no." I requested her driver's license, registration, and insurance. The driver removed a stack of cards from her wallet, which was located in her purse on right front passenger seat. She began sifting through the stack of cards. I observed her clearly pass by her license and continue searching through the cards. Unable to locate her license on the first attempt, she started over at the top and located the license on the second attempt. She was identified as Eryn Greenfield by California driver's license (#CA1234567). After handing me the license, she did not make an attempt to retrieve the other documents I had requested. I asked her again for the registration and insurance cards. She then retrieved them out of the glove compartment. I asked her how much alcohol she had consumed and she stated "a couple of beers about an hour ago." I asked her what size and type of beer and she replied with 12oz. bottles of Heineken. I asked her if she felt the effects of the drinks and she stated, "No, I feel fine." As she spoke, I noticed that her speech was slurred. I asked her to exit the vehicle and step to the side walk so I could administer several field sobriety tests to her (see field sobriety test section). As she exited the vehicle, she stepped around the front as instructed, then stumbled on the raised curb. I asked her several pre-field sobriety test questions of which she answered accordingly (see page 2 of face page). As I communicated with her, I smelled an odor of alcoholic beverage emitting from her breath.

Field Sobriety Tests:

This evaluation was performed on Riverpoint Drive, just south of Reed Avenue. The evaluation surface was smooth concrete. Lighting conditions consisted of patrol vehicle headlights, spotlights, overhead lights, streetlight, and my flashlight. No surface defects were noted or claimed.

Horizontal Gaze Nystagmus (explained):

I observed lack of smooth pursuit, distinct and sustained nystagmus at maximum deviation, and an onset of nystagmus prior to 45 degrees in both of Greenfield's eyes.

Walk and Turn (explained and demonstrated):

Instruction Stage: Lost balance (feet broke apart)

Walking Stage (1st Nine): Walked 10 steps (counted 10). Raised left arm over 6 inches away from body to assist with balance (at steps 4-5).

Walking Stage (2nd Nine): Walked 10 steps (counted 9). Raised left arm over 6 inches away from body to assist with balance (at steps 6-7).

Turn: Lost balance during turn.

One Leg Stand (explained and demonstrated):

Greenfield raised her left leg and began counting. She put her foot down on counts 1006 and 1009. As she was counting, she skipped 1017 (counting from 1016 to 1018). Used right arm for balance (6+ inches from body). She counted to 1019 after 30 seconds.

Arrest:

Based on the following information, I formed the opinion that Greenfield was driving under the influence of an alcoholic beverage:

- Driving at night with no headlights.
 - Driving to the right of the solid white fog line on exit ramp.
 - Making wide right turn from eastbound Reed Avenue to southbound Riverpoint Drive.
 - Right tire rubbing against raised concrete curb after stop was initiated.
 - My observed divided attention problems while retrieving her license/registration and insurance.
 - Her red, watery eyes, and slurred speech.
 - Her admissions to consuming alcoholic beverages.

- Stumbling over curb after exiting the vehicle.
- Odor of alcoholic beverage emitting from her breath.
- My observed signs of impairment as she performed the field sobriety tests.

I arrested Greenfield for driving under the influence of an alcoholic beverage at 9:20 p.m. Greenfield was given the proper chemical testing advisement. She chose a breath test and was transported to the breath testing facility. She provided two breath samples of 0.10 and 0.10 at 9:50 p.m. and 9:52 p.m. She was then booked along with her property.

Recommendations:

I recommend a copy of this report be forwarded to the district attorney's office for review and prosecution of Greenfield for driving under the influence and driving with a blood alcohol concentration at or above the legal state limit.

Vehicle Disposition:

Greenfield's vehicle was stored by Reliable Towing.